IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 656 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SUKHVASI BABULAL SHARMA

Versus

KISHORKUMAR MAHIPATRAI ACHARYA

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Appearance:

1. Special Civil Application No. 656 of 2003

MR SB SHRIVASTAV for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for Respondent No. 2

RULE SERVED for Respondent No. 2,3

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioners limited grievance is that though he was asked to work between November, 1994, and March, 1995, he has not been paid salary for that period.

1.1. His say is that he was appointed by the Ambica Mills Limited as Security Supervisor vide letter dated 17th October, 1978. Since then, he had been working on the said post. In the month of November, 1994, his salary was raised to Rs.4,100=00. His say is that the Mill was closed on 24th October, 1994. However, by notice dated 24th October, 1994, the factory Manager had intimated all the workers and staff members of the said Mill that till second notice was not displayed on board they will be considered as daily present in the Mill. It was stated in the notice that the management after negotiations with the leaders of Union will decide what was to be paid towards the arrears. It is the say of the petitioner that he had been regularly receiving written intimations from the factory Manager and other officers of the mill directing him to keep the office open for the persons working in the different departments of the Mill and also in the office, since upon closure of the Mill, the premises were remaining closed. The petitioner being Security Supervisor, was addressed these letters.

1.1. Initially the petitioner had approached the Labour Court, Ahmedabad by filing Recovery Application under Section 33 (C) (2), which was numbered as 1006 of 1995. The said application was rejected by the Labour Court on the ground that the petitioner was not "Workman" within the meaning of the provisions of Industrial Dispute Act. However, he challenged the said decision before this Court and this Court by judgment dated 9th August, 2002 allowed the petition and held that the petitioner was "Workman" and he was entitled to approach the Labour Court by filing application for recovery of the amount. Since the matter was not decided on its merits, the case was remanded back to the Labour Court.

1.2. The Labour Court entertained the application numbered as 1006 of 1995 on merits and came to the conclusion that the petitioner had failed to establish his right to receive salary of the aforesaid period and, therefore, his application could not be granted. The decision of the Labour Court is dated 7th January, 2003, which is now under challenge before this Court.

1.3. The matter was heard by this Court on 19th March, 2004. On that day, fresh notice was issued to the Official Liquidator, since this Court has already ordered winding up of the Mill and has appointed the Official

Liquidator incharge of the assets of the Mill. In the said order, it was made clear that if on the next date of hearing, either Official Liquidator or his representative did not remain present, the matter will be proceeded in their absence. Today despite, the service of the said order, none has remained present.

2. Having heard the petitioner and Mr. Nandish Chudgar learned advocate appearing for respondent no.2 and having gone through the record of this petition, it is clear that the petitioner was appointed as Security Supervisor with the Mill vide appointment letter dated 17th October, 1978. He continued to work till the date on which the Mill was declared closed i.e. 24th October, 1994. It is also clear from the record that on that day, a notice was displayed wherein, it was clearly stated that workers and the staff members would be considered present in the Mill on every day till further notice was given. There is nothing on record to show whether any further notice was ever displayed by the Mill. The Labour Court has mainly proceeded on the footing that the petitioner had not established what was the outcome of the negotiations that were carried out between the Union leaders and the Management. In my opinion the finding of the Labour Court is erroneous because when in the notice it is clearly notified that the workers and the staff members will be considered as present in the Mill and when in particular the petitioner was discharging the duty as Security Supervisor to protect the properties of the Mill, he was required to be paid the salary. The petitioner has produced on record several letters that were written to him by the Factory Manager. One such letter written in the month of February, 1995, has been admitted by the factory Manager who had been examined before the Labour Court. It therefore, makes it abundantly clear that even in the month of March, 1995, the petitioner was discharging his duty as Security Supervisor. If that be so, he was entitled to receive his salary. The respondents have not been able to produce any evidence which would show that the petitioner had not worked for all these days. In such circumstances, it is just and proper that the petitioner be paid his salary for the service which he had rendered to the Mill between November, 1994 and March, 1995. The finding of the Labour Court to the extent is erroneous and the judgment is required to be quashed and set aside.

3. For the reasons stated above, this petition is allowed. It is held that the petitioner would be entitled to receive his salary for the period between November, 1994 and March, 1995. Since the winding up

order has already been passed and the Official Liquidator has been appointed, the petitioner will have to lodge his claim for recovery of the said amount before the appropriate forum. This is necessary because, the petitioner cannot be permitted to steal march over other creditors of the closed Mill and he will have to wait for his turn.

With this direction, the petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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